



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 29 2012

Bill Beddoes

Allen Park, MI 48101

RE: MUR 6500
W. Clark Durant;
The American Way – Durant 2012
and Walter P. Czarnecki, in his
official capacity as treasurer;
New Common School Foundation;
Cornerstone Schools Association

Dear Mr. Beddoes:

On May 22, 2012, the Federal Election Commission ("Commission") reviewed the allegations in your complaint dated September 23, 2011 and its supplement dated October 6, 2011, and on the basis of the information provided in your submissions, and information provided by the respondents, the Commission made the following findings:

- No reason to believe that New Common School Foundation, its Board members, The American Way – Durant 2012 and Walter Czarnecki, in his official capacity as treasurer, and W. Clark Durant, violated 2 U.S.C. § 441b(a) or 11 C.F.R. §§ 114.2(f)(1) and 300.61 in connection with New Common School Foundation obtaining legal advice regarding Durant's candidacy.
- No reason to believe that Cornerstone Schools Association and the American Way – Durant 2012 and Walter Czarnecki, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.4(c)(6)(i) and (ii) in connection with an email advertising the event at which W. Clark Durant announced his candidacy.
- No reason to believe that Cornerstone Schools Association and The American Way – Durant and Walter Czarnecki, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by making or receiving a prohibited in-kind corporate contribution in the form of a CSA television advertisement.

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- No reason to believe that Cornerstone Schools Association and The American Way – Durant 2012 and Walter Czarnecki, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by allowing W. Clark Durant the use of its facility at less than the usual and normal cost.
- No reason to believe that Cornerstone Schools Association and The American Way – Durant 2012 and Walter Czarnecki, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by the use of Cornerstone Schools Association's publicly available YouTube video in the Committee's campaign mailer.

Accordingly, on May 22, 2012, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Anthony Herman
General Counsel



BY: Mark D. Shonkwiler
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6500

RESPONDENTS: The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer

W. Clark Durant

I. INTRODUCTION

This matter was generated by a complaint filed by the Bill Beddoes. *See* 2 U.S.C. § 437(g)(a)(1). The matter involves allegations that two non-profit corporations, New Common School Foundation (“NCSF”) and Cornerstone Schools Association (“CSA”), an educational institution, made prohibited in-kind contributions to The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer (“Committee”), the principal campaign committee for U.S. Senate candidate W. Clark Durant. Durant is the current President and a Board of Director member of NCSF, and currently serves as the “Founding Chair” and a Board of Director member of CSA.

The complaints (original, amended, and second amended) allege that the Committee violated 2 U.S.C. § 441b(a) by receiving prohibited in-kind corporate contributions as a result of: 1) NCSF’s payment for legal advice regarding any possible conflict of interest arising from Durant being a candidate while continuing to be an NCSF officer;¹ 2) a CSA television advertisement promoting the school across the state; 3) an email sent by CSA’s President and CEO, Ernestine Sanders, to its “partners” and “friends” inviting them to attend a regularly

¹ Complainant also alleges that the NCSF Board, of which Durant is a member, violated 11 C.F.R. § 114.2(f)(1) by facilitating the making of a prohibited corporate in-kind contribution; and that Durant, as a NCSF Board member, violated 11 C.F.R. § 300.61 by unlawfully directing the use of non-federal funds to benefit his federal candidacy.

1 scheduled meeting, during which Durant announced his candidacy; 4) the Committee's use of
2 CSA's facility for announcing Durant's candidacy; and 5) the Committee's use of video
3 materials from CSA's YouTube page in one of its campaign mailers.

4 Respondents were notified of the complaint and amendments and deny the allegations.
5 Respondents, however, did not address the allegation regarding the CSA television
6 advertisement included in the original complaint but not included in the subsequently filed
7 amended and ~~moond~~ amended complaints.

8 For the reasons discussed below, the Commission finds no reason to believe the
9 Respondent violated the Act.

10 **II. FACTUAL BACKGROUND**

11 NCSF is a Michigan non-profit corporation whose stated primary purpose is to "explore
12 educational methodologies that enhance performance throughout the public educational system."
13 Durant is the current President and serves on its Board of Directors. CSA is a Michigan non-
14 profit corporation that operates as a group of charter and independent schools in Detroit. Durant
15 currently serves as its "Founding Chair" and a Board of Director member. On August 8, 2011,
16 Durant filed his Statement of Candidacy with the Commission. The American Way – Durant
17 2012 is Durant's principal campaign committee and its treasurer is Walter P. Czamecki.

18 The complaint alleges that NCSF paid for and Durant accepted legal services for the
19 benefit of Durant's campaign. See Original Complaint at 1. This allegation is based on an
20 August 22, 2011 newspaper article in which Durant was quoted as stating that the NCSF would
21 consult with its legal counsel to ensure that there was no conflict between Durant's continued
22 presidency of NCSF and his Senate candidacy. See *Id.* at 5, Ex. C. In their respective responses
23 to the complaints, both NCSF and Clark Durant's campaign deny such an arrangement. NCSF

1 clarified that it asked its own counsel to research whether the organization could continue to
2 compensate Durant once he announced his candidacy. *See* NCSF and CSA Joint Response
3 (“Joint Response”) at 3. The Durant campaign stated that Durant personally retained and paid
4 for the legal services of a law firm different from the one retained by NCSF to advise him on his
5 legal obligations as a candidate. *See* Committee Response at 2. Complainant asks the
6 Commission to “investigate NCSF’s apparent prohibited in-kind contributions to Durant and the
7 Committee...[and] Durant’s role in directing the non-federal corporate funds of NCSF for legal
8 services for the clear benefit of his federal campaign.” Second Amended Complaint at 6.

9 On September 9, 2011, CSA’s President and CEO, Ernestine Sanders, sent an email
10 (“Sanders email”) to its “partners and friends” inviting them to attend a regularly scheduled
11 quarterly “Partner Morning” meeting on September 23, 2011, during which Durant formally
12 announced his candidacy.² *See* Complaints. Complainant contends that, given Durant’s current
13 position at CSA, there must have been coordination on the email resulting in the receipt of a
14 prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a). *Id.* Respondents
15 deny that the communication was coordinated with Durant or the Committee. Committee
16 Response at 3.

17 Complainant alleges further that CSA funded and aired an advertisement on a cable
18 television system serving Mackinac Island, Michigan, which is far outside of the Southeastern
19 Michigan area where CSA operates, on September 10, 2011. Without explaining the basis for its
20 conclusion or providing any details about the context, such as whether Durant is featured or even

² An individual meets the definition of a “partner” when he/she donates at least \$2,500 per year to help underwrite a child’s education for one year and is teamed with a student with whom they meet during the “Partner Mornings,” which are conducted four times per year. An individual who meets the definition of a “friend” is someone who contributes to CSA but not at the partner level.

1 mentioned, Complainant alleges the ad was intended to build goodwill for Durant's campaign.
2 Original Complaint at 2. The advertisement is not available for Commission review. The
3 subsequently filed amended and second amended complaints do not include this particular
4 allegation, and the Committee Response does not address this allegation. *See* Amended
5 Complaint; Second Amended Complaint.

6 On September 23, 2011, Durant appeared and announced his campaign for U.S. Senate
7 at CSA's regularly scheduled quarterly "Partner Morning" meeting. Complainant alleges that
8 Durant's appearance at the "Partner Morning" meeting was essentially a campaign event for
9 which neither Durant nor his Committee paid the usual and normal cost for the use of CSA's
10 facility as required by 11 C.F.R. § 114.4(c)(7)(i). Complainant contends that Durant's use of
11 CSA's facility, at no cost to the Committee, constitutes the receipt of a prohibited in-kind
12 corporate contribution. However, the Committee stated that it paid \$800 for use of the facility
13 and that this was the usual and normal cost. Committee Response at 2.

14 On September 26, 2011, the Committee distributed a four page campaign mailer that
15 stated that Durant "formally announced his candidacy for United States Senate from the
16 Cornerstone Schools on Friday September 23." The mailer included a photograph of
17 "Cornerstone kindergartners recit[ing] the U.S. Constitution." Second Amended Complaint at 3-
18 4, Ex. E. Underneath the photograph is a link to the Committee's YouTube page that, when
19 accessed, directed the viewer to a video clip from 2008 of what appears to be the same
20 kindergartners reciting the U.S. Constitution.³ *Id.* Complainant alleges that the Committee's use
21 of CSA's YouTube video in its campaign mailer constitutes a prohibited in-kind corporate
22 contribution because the video was funded with CSA's corporate resources, and the Committee

³ This video is not available on the link provided on the mailer, <http://www.youtube.com/clarkdurant>. However, the video can be found at <http://www.youtube.com/watch?v=zzQwTym0Xi8>.

1 used the video without paying a fair market value. *Id.* The Complainant also asserts the use is a
2 potential violation of copyright laws. *Id.* Respondents deny that the Committee's use of
3 publicly available video footage resulted in an in-kind contribution. Committee Response at 2.

4 **III. LEGAL ANALYSIS**

5 The Act prohibits corporations from making contributions in connection with a federal
6 election.⁴ 2 U.S.C. § 441b(a). It also prohibits any candidate from knowingly accepting or
7 receiving any contribution from a corporation, or any officer or any director of a corporation
8 from consenting to any contribution by a corporation to a federal candidate. *Id.* Federal
9 candidates and officeholders, including agents acting on their behalf and entities that are directly
10 established, maintained, financed or controlled by one or more federal candidates or
11 officeholders, may not solicit, direct, receive, transfer, spend or disburse non-federal funds.
12 2 U.S.C. § 441i(e); 11 C.F.R. § 300.61.

13 Commission regulations provide that any incorporated nonprofit educational institution
14 exempt from federal taxation under 26 U.S.C. § 501(c)(3), such as a school, college, or
15 university, may make its facilities available to any federal candidate or candidate's
16 representatives in the ordinary course of business and at the usual and normal charge. 11 C.F.R.
17 § 114.4(c)(7)(i).

18 **A. NCSF's Retention of Counsel**

19 The available information indicates that the funds expended by NCSF to retain counsel
20 were for the purpose of ensuring its own compliance with the Act and Internal Revenue Service
21 laws given its Section 501(c)(3) status. The Committee Response asserts that Durant and NCSF

⁴ Contributions include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

1 retained separate legal counsel to advise them on their differing legal obligations arising out of
2 his candidacy. Committee Response at 2. NCSF's use of funds for the purpose of legal advice
3 pertaining to Durant's candidacy and his continued affiliation with NCSF appears to have been
4 for the benefit of NCSF's own interests, and does not constitute the making or receiving of a
5 prohibited in-kind corporate contribution.

6 There is no available information indicating that NCSF paid for legal advice to benefit
7 Durant or his Committee. Similarly, there is no available information to support the allegation
8 that Durant, as a federal candidate, unlawfully directed the use of non-federal NCSF funds to
9 benefit his candidacy.

10 Accordingly, the Commission: 1) finds no reason to believe that The American Way –
11 Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer, received a prohibited
12 in-kind corporate contribution, in the form of legal services, in violation of 2 U.S.C. § 441b(a);
13 2) finds no reason to believe that W. Clark Durant, as a NCSF Board member, facilitated the
14 making of a prohibited in-kind corporate contribution to the Committee in the form of legal
15 services in violation of 11 C.F.R. § 114.2(f)(1); and 3) finds no reason to believe that W. Clark
16 Durant, as a federal candidate and NCSF Board Member, unlawfully directed the use of non-
17 federal funds to provide legal advice in support of Durant or his candidacy in violation of
18 11 C.F.R. § 300.61.

19 **B. CSA's "Partner Morning" Meeting Email**

20 The Sanders email advertising the announcement of Durant's candidacy was sent only to
21 those individuals who fell within the category of a "partner" or "friend" that would normally be
22 invited and attend CSA's regularly scheduled quarterly "Partner Morning" meeting. Further, it
23 appears that Sanders alone was responsible for preparing the email without any coordination

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1 with Durant or the Committee. *See* Committee Response at 3. There is no available information
2 to support a conclusion that the Sanders email involved any coordination between the parties as
3 defined by 11 C.F.R. § 109.21.

4 Accordingly, the Commission finds no reason to believe that The American Way –
5 Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer, violated 2 U.S.C.
6 § 441b(a) by coordinating the Sanders email sent by Cornerstone Schools Association in a
7 manner that would result in the receipt of a prohibited in-kind corporate contribution.

8 **C. CSA's Television Advertisement**

9 As stated previously, Complainant did not provide any detailed information regarding the
10 CSA advertisement and the Committee Response does not address this issue, presumably
11 because it was not included in the amended complaints. Notwithstanding the Complainant's
12 allegations, there is no available information to support the assertion that the CSA television
13 advertisement constituted a contribution under the Act. Although Complainant asserts that the
14 advertisement was aired in order to promote Durant's candidacy, there is no allegation that the
15 advertisement featured Durant, expressly advocated for his election, was coordinated with the
16 Committee or constituted an electioneering communication. *See* 11 C.F.R. §§ 100.22, 100.29,
17 and 109.21. In the absence of any information that would suggest CSA or the Committee
18 violated the Act with respect to the television advertisement, the Commission finds no reason to
19 believe that The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity
20 as treasurer, violated 2 U.S.C. § 441b(a) by receiving a prohibited in-kind corporate contribution.

21 **D. Use of CSA's Corporate Facility for Candidacy Announcement**

22 The available information supports the Committee's contention that CSA, as a non-profit
23 educational institution, was permitted to make its facilities available to Durant in the ordinary

1 course of business at the usual and normal cost and that it, in fact, paid the usual and normal cost,
2 totaling \$800, for the use of CSA's facilities in conjunction with Durant's appearance at the
3 "Partner Morning" meeting. Committee Response at 3; *see also* 11 C.F.R. § 114.4(c)(7)(i).
4 Therefore, the Commission finds no reason to believe that The American Way – Durant 2012
5 and Walter P. Czarnecki, in his official capacity as treasurer, received a prohibited in-kind
6 corporate contribution in violation of 2 U.S.C. § 441b(a).

7 **E. Use of CSA's YouTube Video**

8 The Commission reviewed the Committee's campaign mailer which contains the
9 information as alleged in the complaint. Complaint at Ex. E. Although the Committee does not
10 make specific reference to the campaign mailer in its response, but rather refers to the videos
11 being placed on the Committee's website, the Commission concludes that the response appears
12 to be sufficient to cover the campaign mailer and YouTube video at issue. Committee Response
13 at 2. The CSA video is from 2008, well before Durant was a candidate. CSA states that the
14 Committee made the decision to post the publicly available video on its own website without
15 consultation with CSA. Joint Response at 5.

16 The Commission concludes that the Committee's use of the publicly available
17 information from CSA's YouTube page does not constitute an in-kind corporate contribution
18 from CSA to the Committee.⁵ Accordingly, the Commission finds no reason to believe that The
19 American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer,
20 received a prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a) with the

⁵ For purposes of this Report, the Commission does not reach any conclusion with respect to the copyright allegations since this issue does not fall within its jurisdiction. The Commission need not address coordination and the safe harbor for publicly available information where the mailer at issue was paid for by the Committee. *See* Committee Response at 2; *see also* Explanation and Justification for *Coordinated Communications and Independent Expenditures*, 71 Fed. Reg. 33,190 (June 6, 2006); 11 C.F.R. § 109.21(d)(2).

**MUR 6500 (Durant)
Factual and Legal Analysis
for Durant and the Committee**

- 1 use of Cornerstone Schools Association's publicly available YouTube video in its campaign**
- 2 mailer.**

1 **FEDERAL ELECTION COMMISSION**
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3 **FACTUAL AND LEGAL ANALYSIS**
4

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6 MUR 6500
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8 RESPONDENT: Cornerstone Schools Association
9

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11 **I. INTRODUCTION**
12

13 This matter was generated by a complaint filed by the Bill Beddoes. *See*

14 2 U.S.C. § 437(g)(a)(1). The matter involves allegations that an incorporated non-profit
15 educational institution, Cornerstone Schools Association ("CSA"), made prohibited in-kind
16 contributions to The American Way – Durant 2012 and Walter P. Czarnecki, in his official
17 capacity as treasurer ("Committee"), the principal campaign committee for U.S. Senate candidate
18 W. Clark Durant. Durant currently serves as the "Founding Chair" and a Board of Director
19 member of CSA.

20 The complaints (original, amended, and second amended) allege that the CSA violated
21 2 U.S.C. § 441b by making prohibited in-kind corporate contributions to the Committee as a
22 result of: 1) a CSA television advertisement promoting the school across the state; 2) an email
23 sent by CSA's President and CEO, Ernestine Sanders to its "partners" and "friends" inviting
24 them to attend a regularly scheduled meeting, during which Durant announced his candidacy;
25 3) the Committee's use of CSA's facility for announcing Durant's candidacy; and 4) the
26 Committee's use of video materials from CSA's YouTube page in one of its campaign mailers.

27 Respondent was notified of the complaint and amendments and denies the allegations.

28 Respondent, however, did not address the allegation regarding the CSA television advertisement

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1 included in the original complaint but not included in the subsequently filed amended and second
2 amended complaints.

3 For the reasons discussed below, the Commission finds no reason to believe the
4 Respondent violated the Act.

5 **II. FACTUAL BACKGROUND**

6 CSA is a Michigan non-profit corporation that operates as a group of charter and
7 independent schools in Detroit. Joint Response at 2. Durant currently serves as its "Founding
8 Chair" and a Board of Director member. *Id.*

9 On September 9, 2011, CSA's President and CEO, Ernestine Sanders, sent an email
10 ("Sanders email") to its "partners and friends" inviting them to attend a regularly scheduled
11 quarterly "Partner Morning" meeting on September 23, 2011, during which Durant formally
12 announced his candidacy.¹ *See* Complaints. Complainant asserts that it is likely that the email
13 was distributed outside CSA's restricted class; and that the Sanders email constitutes a prohibited
14 endorsement of Durant's candidacy to the general public in violation of 11 C.F.R.

15 § 114.4(c)(6)(i) and (ii). Complainant also contends that, given Durant's current position at
16 CSA, there must have been coordination resulting in the making and accepting of a prohibited
17 in-kind corporate contribution in violation of 2 U.S.C. § 441b(a). *Id.* Respondent denies that
18 there was any endorsement or that the communication was coordinated with Durant or the
19 Committee. Joint Response at 3.

¹ CSA, in response, explains that an individual meets the definition of a "partner" when he/she donates at least \$2,500 per year to help underwrite a child's education for one year and is teamed with a student with whom they meet during the "Partner Mornings," which are conducted four times per year. *Id.* An individual who meets the definition of a "friend" is someone who contributes to CSA but not at the partner level. *Id.*

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1 Complainant alleges further that CSA funded and aired an advertisement on a cable
2 television system serving Mackinac Island, Michigan, which is far outside of the Southeastern
3 Michigan area where CSA operates, on September 10, 2011. Without explaining the basis for its
4 conclusion or providing any details about the context, such as whether Durant is featured or even
5 mentioned, Complainant alleges the ad was intended to build goodwill for Durant's campaign.

6 Original Complaint at 2. The advertisement is not available for Commission review. The
7 subsequently filed amended and second amended complaints do not include this particular
8 allegation, and the Joint Response does not address this allegation. See Amended Complaint;
9 Second Amended Complaint.

10 On September 23, 2011, Durant appeared and announced his campaign for U.S. Senate
11 at CSA's regularly scheduled quarterly "Partner Morning" meeting. Complainant alleges that
12 Durant's appearance at the "Partner Morning" meeting was essentially a campaign event for
13 which neither Durant nor his Committee paid the usual and normal cost for the use of CSA's
14 facility as required by 11 C.F.R. § 114.4(c)(7)(i). Complainant contends that Durant's use of
15 CSA's facility, at no cost to the Committee, constitutes a prohibited in-kind corporate
16 contribution. However, the Committee paid \$800 for use of the facility and CSA stated this was
17 the usual and normal cost. Joint Response at 4-5.

18 On September 26, 2011, the Committee distributed a four page campaign mailer that
19 stated that Durant "formally announced his candidacy for United States Senate from the
20 Cornerstone Schools on Friday September 23." The mailer included a photograph of
21 "Cornerstone's kindergartners recit[ing] the U.S. Constitution." Second Amended Complaint at
22 3-4, Ex. E. Underneath the photograph is a link to the Committee's YouTube page that, when
23 accessed, directed the viewer to a video clip from 2008 of what appears to be the same CSA's

1 kindergartners reciting the U.S. Constitution.² *Id.* Complainant alleges that the Committee's use
2 of CSA's YouTube video in its campaign mailer constitutes a prohibited in-kind corporate
3 contribution because the video was funded with CSA's corporate resources, and the Committee
4 used the video without paying a fair market value. *Id.* The Complainant also asserts the use is a
5 potential violation of copyright laws. *Id.* Respondent denies that the Committee's use of
6 publicly available video footage resulted in a prohibited in-kind contribution. Joint Response at
7 5.

8 **III. LEGAL ANALYSIS**

9 The Act prohibits corporations from making contributions in connection with a federal
10 election.³ 2 U.S.C. § 441b(a). It also prohibits any candidate from knowingly accepting or
11 receiving any contribution from a corporation, or any officer or any director of a corporation
12 from consenting to any contribution by a corporation to a federal candidate. *Id.* Commission
13 regulations provide that any incorporated nonprofit educational institution exempt from federal
14 taxation under 26 U.S.C. § 501(c)(3), such as a school, college, or university, may make its
15 facilities available to any federal candidate or candidate's representatives in the ordinary course
16 of business and at the usual and normal charge. 11 C.F.R. § 114.4(c)(7)(i).

17 **A. CSA's "Partner Morning" Meeting Email**

18 The Sanders email advertising the announcement of Durant's candidacy was sent only
19 to those individuals who fell within the category of a "partner" or "friend" that would normally
20 be invited and attend CSA's regularly scheduled quarterly "Partner Morning" meeting. Further,

² This video is not available on the link provided on the mailer, <http://www.youtube.com/clarkdurant>. However, the video can be found at <http://www.youtube.com/watch?v=zzQwTym0Xi8>.

³ Contributions include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

1 it appears that Sanders alone was responsible for preparing the email without any coordination
2 with Durant or the Committee.⁴ See Joint Response at 3. There is no available information to
3 support a conclusion that there was any coordination between the parties as defined by
4 11 C.F.R. § 109.21.

5 The Act and the Commission regulations permit a corporation, such as CSA, to endorse a
6 candidate during a candidate appearance before its restricted class, except to the extent that such
7 activity is foreclosed by provisions of law other than the Act. See 11 C.F.R. § 114.2(a)(1) and
8 114.4(c)(6). The Supreme Court decision in *Citizens United*, 558 U.S. ____, 130 S. Ct. 876
9 (January 21, 2010), struck down the Act's prohibition on the use of corporate general treasury
10 funds to finance communications that expressly advocate for federal candidates.

11 Therefore, even if CSA had endorsed Durant in the Sanders email or during his
12 appearance before CSA's restricted class, such an endorsement is not prohibited.

13 Accordingly, the Commission: 1) finds no reason to believe that Cornerstone Schools
14 Association violated 2 U.S.C. § 441b(a) by coordinating the Sanders email in a manner that
15 would result in the making of a prohibited in-kind corporate contribution; and 2) finds no reason
16 to believe that Cornerstone Schools Association violated 11 C.F.R. § 114.4(c)(6)(i) and (ii) by
17 endorsing Durant's candidacy.

18 **B. CSA's Television Advertisement**

19 As stated previously, Complainant did not provide any detailed information regarding the
20 CSA advertisement and the Responses do not address this issue, presumably, because it was not

⁴ CSA states that it did not incur any costs to notify its "partners" and "friends" of the Durant's presence at "Partner Morning." *Id.* at 4. However, it estimates that the value of the time Sanders spent composing the email would total, at most, about \$85. *Id.* It further asserts that it viewed Durant's appearance in the context of an educational opportunity for the students as indicated by the full text of the email. *Id.* at 3-4.

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1 included in the amended complaints. Notwithstanding the Complainant's allegations, there is no
2 available information to support the assertion that the CSA advertisement constituted a
3 contribution under the Act. Although Complainant asserts that the advertisement was aired in
4 order to promote Durant's candidacy, there is no allegation that the advertisement featured
5 Durant, expressly advocated for his election, was coordinated with the Committee or constituted
6 an electioneering communication. *See* 11 C.F.R. §§ 100.22, 100.29, and 109.21. In the absence
7 of any information that would suggest CSA or the Committee violated the Act with respect to the
8 television advertisement, the Commission finds no reason to believe that Cornerstone Schools
9 Association violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution to
10 The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer.

11 **C. Use of CSA's Corporate Facility for Candidacy Announcement**

12 The available information supports the Respondent's contention that CSA, as a non-profit
13 educational institution, was permitted to make its facilities available to Durant in the ordinary
14 course of business at the usual and normal cost and that it, in fact, paid the usual and normal cost,
15 totaling \$800, for the use of CSA's facilities in conjunction with Durant's appearance at the
16 "Partner Morning" meeting. Joint Response at 4; *see also* 11 C.F.R. § 114.4(c)(7)(i). Therefore,
17 the Commission finds no reason to believe that Cornerstone Schools Association made a
18 prohibited in-kind corporate contribution in violation of 2 U.S.C. § 441b(a).

19 **D. Use of CSA's YouTube Video**

20 The Commission has reviewed the Committee's campaign mailer which contains the
21 information as alleged in the complaint. Complaint at Ex. E. Although CSA does not make a
22 specific reference to the campaign mailer in its response, but rather refers to the videos being
23 placed on the Committee's website, the Commission concludes that the response appears to be

1 sufficient to cover the campaign mailer and YouTube video at issue. Joint Response at 5. The
2 CSA video is from 2008, well before Durant was a candidate. CSA states that the Committee
3 made its decision to post the publicly available video on its own website without consultation
4 with CSA. *Id.* The Commission concludes that the use of the publicly available information by
5 The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer,
6 from Cornerstone Schools Association’s YouTube page does not constitute a prohibited in-kind
7 corporate contribution.⁵ Accordingly, the Commission finds no reason to believe that the
8 Cornerstone Schools Association made a prohibited in-kind corporate contribution in violation of
9 2 U.S.C. § 441b(a) with the use of the publicly available YouTube video, in its campaign mailer,
10 by The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as
11 treasurer.

⁵ For purposes of this Report, the Commission does not reach any conclusion with respect to the copyright allegations since this issue does not fall within its jurisdiction.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6500

RESPONDENT: New Common School Foundation

I. INTRODUCTION

This matter was generated by a complaint filed by the Bill Beddoes. *See* 2 U.S.C. § 437(g)(a)(1). The matter involves allegations that a non-profit corporation, New Common School Foundation ("NCSF"), made a prohibited in-kind contribution to The American Way – Durant 2012 and Walter P. Czarnecki, in his official capacity as treasurer ("Committee"), the principal campaign committee for U.S. Senate candidate W. Clark Durant. Durant is the current President and a Board of Director member of NCSF.

The complaints (original, amended, and second amended) allege that NCSF violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution as a result of NCSF's payment for legal advice regarding any possible conflict of interest arising from Durant being a candidate while continuing to be an NCSF officer. Complainant also alleges that the NCSF Board, of which Durant is a member, violated the prohibition on corporate facilitation of contributions under 11 C.F.R. § 114.2(f)(1) when it directed its lawyers to research possible conflict of interest issues that might arise as a result of Durant's candidacy. Respondent was notified of the complaint and amendments and denies the allegations.

For the reasons discussed below, the Commission finds no reason to believe that NCSF violated the Act.

1 **II. FACTUAL BACKGROUND**

2 NCSF is a Michigan non-profit corporation whose stated primary purpose is to “explore
3 educational methodologies that enhance performance throughout the public educational system.”
4 NCSF and Cornerstone Schools Association Joint Response (“Joint Response”) at 2. Durant is
5 the current President of NCSF and serves on its Board of Directors. *Id.* The complaint alleges
6 that NCSF paid for legal services for the benefit of Durant’s campaign. *See* Original Complaint
7 at 1. This allegation is based on an August 22, 2011 newspaper article in which Durant was
8 quoted as stating that the NCSF would consult with its legal counsel to ensure that there was no
9 conflict between Durant’s continued presidency of NCSF and his Senate candidacy. *See Id.* at 5,
10 Ex. C. In their respective responses to the complaints, both NCSF and Clark Durant’s campaign
11 deny such an arrangement. NCSF clarified that it asked its own counsel to research whether the
12 organization could continue to compensate Durant once he announced his candidacy. *See* Joint
13 Response at 3. The Durant campaign stated that Durant personally retained and paid for the
14 legal services of a law firm different from the one retained by NCSF to advise him on his legal
15 obligations as a candidate. *See* Committee Response at 2. Complainant asks the Commission to
16 “investigate NCSF’s apparent prohibited in-kind contributions to Durant and the Committee, and
17 the role NCSF’s Board of Directors played in facilitating such a contribution.” Second Amended
18 Complaint at 6.

19 **III. LEGAL ANALYSIS**

20 The Act prohibits corporations from making contributions in connection with a federal
21 election. 2 U.S.C. § 441b(a). Contributions include any direct or indirect payment, distribution,
22 loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or
23 campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). In-kind

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1 contributions must be reported pursuant to 2 U.S.C. § 434(b). The corporate ban on
2 contributions to federal candidates also includes in-kind contributions. 11 C.F.R. § 114.2(c).

3 The available information indicates that the funds expended by NCSF to retain counsel
4 were for the purpose of ensuring its own compliance with the Act and Internal Revenue Service
5 laws given its Section 501(c)(3) status. NCSF responded that it did not pay the firm retained by
6 Durant for any legal services provided to Durant or his committee, but rather hired its own
7 counsel to conduct minimal research to determine whether it could continue to compensate
8 Durant as its President while he was also a candidate. Joint Response at 2-3.

9 There is no available information indicating that Durant or the NCSF Board directed the
10 use of NCSF funds for legal advice to benefit Durant's candidacy. NCSF's use of funds for the
11 purpose of legal advice pertaining to Durant's candidacy and his continued affiliation with NCSF
12 appears to have been for the benefit of NCSF's own interests, and does not constitute the
13 making, receiving, or facilitating of a prohibited in-kind corporate contribution.

14 Accordingly, the Commission: 1) finds no reason to believe that New Common School
15 Foundation violated 2 U.S.C. § 441b(a) by making a prohibited in-kind corporate contribution, in
16 the form of legal services, to The American Way – Durant 2012 and Walter P. Czarnecki in his
17 official capacity as treasurer; and 2) finds no reason to believe that the New Common School
18 Foundation Board Members violated 11 C.F.R. § 114.2(f)(1) by facilitating the making of a
19 prohibited in-kind corporate contribution to the Committee in the form of legal services.

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